

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

ORDER

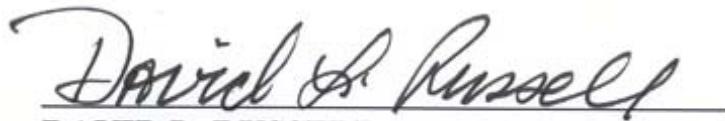
Before the Court are the Report and Recommendation of United States Magistrate Judge Bana Roberts entered March 31, 2009 [Doc. No. 54] and Plaintiff's Objection to the Report and Recommendation filed April 8, 2009. Doc. No. 55. Pursuant to 28 U.S.C. § 636(b)(1)(B), the Court reviews the Report and Recommendation *de novo* in light of Plaintiff's Objection.

The Magistrate Judge recommended that Defendants' motion to dismiss Plaintiff's Amended Complaint for failure to exhaust administrative remedies be treated as a motion for summary judgment, that that motion be granted and that Plaintiff's Amended Complaint be dismissed in its entirety for failure to exhaust administrative remedies as required by 42 U.S.C. § 1997e(a). In his Objection, Plaintiff states that he has provided statements that certain prisoners and Department of Correction officers would testify and verify that Plaintiff did send and/or attempt to send requests to staff and grievances and Plaintiff states that he is unable to investigate and obtain affidavits in support of his claim that Defendants prevented exhaustion. The Court cannot consider Plaintiff's statements that others would

testify that Plaintiff sent requests to staff and grievances which went unanswered or were thrown in the trash as evidence of exhaustion of administrative remedies. As to Plaintiff's assertion in his Objection that this Court stated that Plaintiff had provided requests to staff and grievances and his suggestion that it could therefore be inferred that Plaintiff exhausted his administrative remedies, *see* Objection at p. 2, the Court has reviewed its Orders herein and finds that it made no such statement. Plaintiff has attached to his objection one request to staff dated December 6, 2008 but that request does not relate to the events which are the subject of Plaintiff's claims in this action, which was brought in 2007. The remaining statements in Plaintiff's Objection are not relevant to the issue of exhaustion of administrative remedies.

In accordance with the foregoing, Plaintiff's Objection to the Report and Recommendation is without merit. The Report and Recommendation of the Magistrate Judge [Doc. No. 54] is ADOPTED in its entirety, Defendants' motion to dismiss [Doc. No. 47] is treated as a motion for summary judgment and is GRANTED and Plaintiff's Amended Complaint is summarily DISMISSED for failure to exhaust administrative remedies. Plaintiff's "Motion for Summary Judgment and to Order Settlement Conference" [Doc. No. 28] is DENIED as moot.

IT IS SO ORDERED this 10th day of April, 2009.



DAVID L. RUSSELL
UNITED STATES DISTRICT JUDGE